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**Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**
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Item 4 of the provisional agenda*
**Consideration of the additional international legal instrument against illegal trafficking in and transporting of migrants**

# Proposals and contributions received from Governments

**Addendum**

## Contents

| | | Page |
|---|---|---|
| II. | Proposals and contributions received from Governments | 3 |
| | Argentina | 3 |
| | Austria | 4 |
| | Austria, Canada, Germany and Netherlands | 4 |
| | Austria and Italy | 5 |
| | Belgium | 7 |
| | Cameroon | 7 |
| | Canada | 8 |
| | Canada and United States of America | 9 |
| | China | 9 |
| | France | 10 |
| | Germany | 10 |
| | Holy See | 12 |
| | India | 12 |
| | Libyan Arab Jamahiriya | 13 |
| | Lithuania | 17 |

* A/AC.254/26.

Page

Morocco ..... 18
Netherlands ..... 18
Philippines ..... 18
Singapore ..... 19
Syrian Arab Republic ..... 19
United States of America ..... 21

# II. Proposals and contributions received from Governments

## Argentina*

[Original: Spanish]

Argentina proposes that the following section be inserted after article 7 and the subsequent sections renumbered accordingly:

**"(...) Trafficking in migrants by land**

*"Article (...)*

"1. States Parties shall make provision in their respective legislations to establish the liability of commercial overland carriers for the transport of passengers and crew members, in conformity with the immigration law of the country of destination or transit. To that end, the legislation of States Parties shall provide that commercial overland carriers shall, as an absolute prerequisite for undertaking the carriage, demand all due documentation required for admission of their passengers to the territory of the State of destination or transit in any of the categories of admission stipulated in domestic immigration law.

"2. States Parties shall establish in their domestic legislation the obligation for commercial overland carriers, in cases of transit through one or more States, to declare the names of passengers whom they are transporting to the immigration authority competent for the latter. States Parties shall also adopt measures in their domestic legislation to render the commercial overland carrier responsible for the actual exit of such persons from the corresponding territories and shall provide that, in the event that passengers declared as being transported fail to leave the country in the manner, at the place and within the time limit stipulated in the immigration law of the transit country, the immigration authority of that country may arrange for the return of such persons at the exclusive cost of the carrier.

"3. It shall be possible for the provisions of this article not to apply within the territorial scope of economic unions, customs unions or free-trade zones that have specific regulations governing the entry into and movement of persons within such integrated geographical areas that do not conform to the provisions of this article.

"4. Any State Party that has sufficient grounds to believe that a commercial overland carrier is involved in activities related to trafficking in migrants may request the necessary assistance to counter such activities from the State Party in which that carrier is lawfully constituted, or in which the vehicles used by such carrier in the provision of its services are situated or registered, or in which such carrier has its actual place of business, in conformity with the legal provisions of the country concerned.

"5. States Parties shall establish ongoing cooperation mechanisms for the detection of any carriage of persons, from one country to another or in transit to a third country, undertaken by persons on an individual or organized, regular or occasional basis without due authorization, by a means of overland transport.

* Amendment previously issued in document A/AC.254/L.99.

"6. States Parties shall establish institutional cooperation mechanisms for the detection and punishment of freight carriers who engage in the smuggling of migrants.

"7. States Parties shall offer the fullest assistance with regard to the investigation of methods of overland trafficking coming within their jurisdiction. Authorities involved shall act with all due diligence in order to ensure that such assistance is furnished expeditiously with a view to avoiding any impairment of such cooperation."

## Austria

[Original: English]

### Article 2

*Paragraph 2*

1. As outlined in paragraphs 5-7 of the contribution of Austria and Italy (A/AC.254/L.71), both delegations are of the opinion that in particular the procurement of illegal entry into a State other than the one in which the criminal offence is committed should also be covered by the Protocol.

2. To that end the following options could be envisaged:

(a) To replace the words "in a State" in article 2, paragraph 1 (a), with the words "in any State";

(b) To insert after the words "smuggling of migrants" in option 1 of article 4, paragraph 1, or in option 2 of article 4, paragraph 1 (a), the following words "into any State".

3. Either option would cover not only the organization of smuggling activities in a third country but also the smuggling out of the State concerned into another State.

4. As already mentioned in paragraph 7 of the previous submission (A/AC.254/L.71), the obligation to prosecute is subject only to the provisions on jurisdiction (article 6). Thus neither option mentioned above would imply the obligation to establish universal jurisdiction.

## Austria, Canada, Germany and Netherlands

[Original: English]

### Article 4

*Paragraph 7*

An alternative to paragraph 7 is to insert the following paragraph as paragraph 3 in article 5 (Scope of application):

"3. This Protocol is without prejudice to the position and status of smuggled migrants."

## Austria and Italy*

[Original: English]

### Introduction

1. The Economic and Social Council, in its resolution 1999/20 of 28 July 1999, adopted on the recommendation of the Commission on Crime Prevention and Criminal Justice at its eighth session, provided the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime with a strong mandate to proceed with the negotiation of the draft protocols to the draft United Nations Convention against Transnational Organized Crime, "in order to enhance the possibility of their completion at the same time as the draft Convention" To that end, the Ad Hoc Committee has decided that informal consultations for the purpose of discussing various items already touched upon in the plenary should be held.

2. At the fifth session of the Ad Hoc Committee, first informal consultations on the draft Protocol against the Smuggling of Migrants by Land, Air and Sea, Supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.1/Rev.2) will be held. Since a certain convergence of views became apparent in a number of important areas during the deliberations on the draft Protocol held at the fourth session of the Ad Hoc Committee, it might be appropriate for the informal consultations at the fifth session to focus on strengthening the emerging consensus and on outlining possible solutions, without necessarily proposing concrete language.

3. Without prejudice to the agenda of the informal consultations, only certain aspects of the draft Protocol where a degree of consensus seems within reach will be addressed in the present document. In that context, it should be recalled that the general purpose of the draft Protocol is to counter the phenomenon of smuggling of migrants by penalizing the smugglers and to prevent persons from becoming the victims of organized smuggling groups.

### Article 2: Definitions

*Paragraph 1*

4. Whereas there was a certain convergence of views on the core parts of the definitions contained in paragraphs 1 (a) and (b) of article 2, some delegations questioned the need for retaining the words "illegal residence" (paragraph 1 (c)), "profit" (paragraph 1 (d)) or "fraudulent travel documents" (paragraph 1 (e)).

*Paragraph 2*

5. While there was broad agreement that any loopholes—such as the procurement of illegal entry into a State other than the one in which the criminal offence is committed—should be avoided, no consensus as to how to achieve that aim has yet emerged. To illustrate the need to avoid any loopholes, various scenarios that might arise in politically more fragmented areas could be envisaged. For example, a criminal organization, camouflaged as a travel agency, might organize, or direct others to carry out, the smuggling of migrants between State A and State B. In order to avoid prosecution, the

* Amendments previously issued in document A/AC.254/L.71.

criminal organization might set up its headquarters in State C. Thus, prosecution of the organization by State C would be needed.

6. To deal with the scenario outlined above, the following options were considered at the fourth session of the Ad Hoc Committee:

(a) Paragraph 2 could be retained in article 2, but perhaps more clearly formulated;

(b) The content of paragraph 2 could be incorporated into paragraph 1 (a) or into article 6.

7. Some delegations expressed their concern that the retention in article 2 of the principle defined in paragraph 2 thereof would entail a too broad obligation of States to prosecute the smuggling of migrants, even when no link to the State concerned existed. Other delegations, however, were of the opinion that such a result would not arise because the obligation to prosecute derived exclusively from article 6 and not from any broader definition contained in article 2.

**Article 4: Criminalization**

*Paragraphs 1 and 2*

8. The principles embodied in paragraphs 1 and 2 of article 4 were generally accepted. However, the need to refer more explicitly to the fact that the crimes covered are crimes committed by organized groups was emphasized by a number of delegations.

*Paragraphs 5 and 6*

9. The possibility of merging paragraphs 5 and 6 was discussed.

*Paragraph 7*

10. There was broad agreement that the Protocol should neither harm migrants nor promote the goals of immigration policies. A strongly held view was that no migrant should be held criminally liable solely on account of having been smuggled. At the same time, it was clear that States must retain the right to apply their domestic laws if a migrant engaged in conduct that constituted an offence under those laws. In that connection, there was a discussion of the question whether criminal offences in relation to the fabrication and use of fraudulent documents should be covered by paragraph 7.

## Belgium

[Original: French]

### A. Amendment previously issued in document A/AC.254/L.35.

**Article 5**

*Paragraph 2*

1. Belgium welcomes the fact that the 1951 Convention[1] and the 1967 Protocol[2] relating to the Status of Refugees have been taken into consideration in the first paragraph of the preamble, in article 5, paragraph 2, and in article 7, paragraph 13, of the draft additional instrument against illegal trafficking in and transporting of migrants (A/AC.254/4/Add.1/Rev.1). However, it would like the second paragraph of article 5 to be supplemented. For that purpose, it wishes to submit to the Ad Hoc Committee a proposal for a safeguard clause such as that contained in article 15 of the draft protocol relating to trafficking in women and children (A/AC.254/4/Add.3/Rev.2):

> "Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention[1] and the 1967 Protocol[2] relating to the Status of Refugees."

### B. Further amendment

**Article 7 ter**

2. Footnote 34 to article 7 *ter* in document A/AC.254/L.128/Add.2 should be expanded. Belgium suggests that article 7 *ter* be supplemented by article 110, paragraph 3, of the Convention on the Law of the Sea of 1982, the text of which would be reproduced there *in extenso*:

> "If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained."

## Cameroon*

[Original: French]

**Article 8: Compliance measures and arrangements**

*Paragraph 2 (a)*

1. Delete the word "illegal" before the word "smuggling", this qualification being redundant.

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[1] United Nations, *Treaty Series*, vol. 189, No. 2545.

[2] Ibid., vol. 606, No. 8791.

* Amendments previously issued in document A/AC.254/L.102.

**Article 11: Prevention**

*Paragraph 1*

2. Delete the words "and seizing", since the operation of inspection is deemed sufficiently rigorous for the prevention stage.

**Article 14: Training**

*Paragraph 3*

3. Paragraph 3 should become article 14 *bis* and read as follows:

*"Article 14 bis*
*"Technical cooperation*

"Each State Party shall make every effort to provide the necessary resources, including vehicles, computer systems and document readers, to combat the smuggling of migrants. States Parties with relevant expertise shall provide technical assistance to States lacking such expertise."

**Article 15: Return of smuggled migrants**

*Paragraph 1*

4. It would be advisable to reword this paragraph in the light of international human rights standards, the economic potential of each State and the length of stay of each migrant.

## Canada*

[Original: English]

**Article 4**

*Paragraph 7*

1. Canada acknowledges that the purpose of the Migrants Protocol is not to criminalize migration or to victimize migrants. However, migrants who engage in criminal activity ought not be above the law in the State in which they find themselves, nor should a person who actively participates in a migrant smuggling ring (e.g. as an instigator or a provider of fraudulent documents) be immune from prosecution just because he or she can also claim to be a migrant.

2. Accordingly, Canada offers the following revised version of paragraph 7 of article 4:

"A person whose illegal entry [or residence] is procured, or intended to be procured, shall not be held responsible for an offence established in accordance with paragraph 1 (a)[3] of this article on the basis of the mere fact of having been smuggled. Nothing in this paragraph shall prevent a State Party from prosecuting or taking any

* Amendment previously issued in document A/AC.254/L.59.
[3] Amendment proposed by the United States of America.

other action against[3] a person whose conduct constitutes an offence under any other provision of this Protocol or under the domestic law of the State Party concerned."

## Canada and United States of America*

[Original: English]

It is proposed that option 2 of article 4, paragraph 1, of the draft Protocol (A/AC.254/4/Add.1/Rev.2), be revised to read as follows:

"1. States Parties that have not yet done so shall adopt the necessary legislative or other measures to establish the following conduct as criminal offences when involving an organized criminal group:

"(a) The smuggling of migrants; and

"(b) The intentional:

"(i) Making of a fraudulent travel or identity document used for international travel;

"(ii) Procuring or possessing of such a document for the purpose of providing it to persons involved in the smuggling of migrants; or

"(iii) Acting on such a document when such conduct is committed by a government official."

## China**

[Original: English]

**Article 7**

1. After paragraph 10, insert a new paragraph as follows:

"(...) If the suspicion proves to be unfounded and the suspected vessel has not committed any act to justify further suspicion, a State Party that has taken action in accordance with this article shall make compensation for any loss or damage that may have been sustained by that vessel."

**New article**

2. After article 11, add a new article as follows:

*"Article (...)*
*"Measures to eliminate the root causes*

"States Parties shall ensure the strengthening of international cooperation in order to eliminate the root causes of the smuggling of migrants, such as poverty and underdevelopment."

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* Amendment previously issued in document A/AC.254/L.76.
** Amendments previously issued in document A/AC.254/5/Add.15.

## France*

[Original: French]

**Article 4: Criminalization**

*Paragraph 7*

1. It is proposed that paragraph 7 should read as follows:

"A person whose illegal entry or illegal residence is procured or intended to be procured shall not be held responsible for an offence established in accordance with this Protocol in respect of the illegal condition of the person's entry or residence. Nothing in this paragraph shall prevent a State Party from prosecuting a person for other activities that would constitute an offence under the domestic law of the State Party concerned."

**Article 9**

2. It is proposed that article 9 should read as follows:

*"Article 9*
*"Other measures*

"1. States Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established under article 4 of this Protocol.

"2. Such measures shall include the establishment, without prejudice to the international conventions applicable, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all passengers travelling by land, sea or air in order to ascertain that they each have a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

"3. States Parties shall take the necessary measures, in conformity with their domestic law, to provide for penalties in cases of violation of the obligation set out in paragraph 2 of this article. Such sanctions may include fines and forfeiture of the vehicles or means of transport used."

## Germany

[Original: English]

1. During the informal consultations on articles 2, 3 and 5, a number of problems seem to have been due simply to the somewhat accidental ordering of articles. The German delegation would therefore like to propose the following reordering of articles in the opening section of the Protocol:

* Amendments previously issued in documents A/AC.254/L.77 and A/AC.254/L.104.

*"Article 1 bis*
*"Aim and purpose*

"1. The aim of this Protocol is to combat the smuggling of migrants committed by organized criminal groups. [*From article 5, paragraph 1.*]

"2. Its purposes in this context are:

"(a) To establish the smuggling of migrants as a criminal offence under the respective national laws of States Parties; [*From article 3 (a).*]

"(b) To promote and facilitate cooperation among States Parties to prevent, investigate and prosecute the crime of smuggling of migrants. [*From article 3 (b).*]

*"Article 3*

[*To be deleted, as its contents have been transferred to new article 1 bis.*]

*"Article 5*

"1. [*To be deleted, as it is now contained in new article 1 bis.*]

"2. *Should become a separate article in the form of a general safeguard clause, which would also cover, in addition to the 1951 and 1967 refugee instruments as currently contained in article 5, paragraph 2, obligations of States under human rights law and humanitarian law.*]"

2. The proposed merger of parts of articles 3 and 5 and their positioning before the definition section in article 2 would make it clear that what States are aiming at is organized smuggler groups. In addition, the reordering and recombination makes the text more readable. The other Protocols should follow the same structure.

**Article 7 ter: Safeguard clauses***

*Paragraph 3*

3. Add the words "When taking such action against a ship," at the beginning of subparagraph (a), and reverse the order of subparagraphs (a) and (b). The reason for this addition and the reversal of the subparagraphs is that, as the text now stands, States simply cannot comply with what is required. They cannot "ensure the safety and humane handling of the persons on board" as such and in general, except if and when they take action against the ship.

**Article 10: Information***

*Paragraph 3*

4. After the words "States Parties" add the words ", in particular those with common borders or located along smuggling routes,".

* Amendments previously issued in document A/AC.254/L.97.

## Holy See*

[Original: English]

### Article 11: Prevention

The following paragraphs should be added at the end of the article:

"(...) States Parties shall foster development programmes and cooperation at the national, regional and international levels, paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the trafficking in migrants.

"(...) States Parties shall encourage cooperation on immigration and asylum policies and shall adopt such global migration strategies as may be necessary to prevent trafficking in migrants."

## India**

[Original: English]

### Article 4: Criminalization

*Paragraph 2*

1. Replace paragraph 2 with the following:

"2. States Parties that have not yet done so shall adopt such legislative or other measures as may be necessary to establish as a criminal offence the following conduct:

"(a) Intentionally making, procuring or providing a fraudulent travel or identity document for the purpose of smuggling migrants; or

"(b) Causing a fraudulent travel or identity document to be used, possessed, dealt with or acted upon for the purpose of smuggling migrants."

*Paragraph 3*

2. Replace paragraph 3 with the following:

"3. Each State Party shall also adopt such legislative or other measures as may be necessary to establish as a criminal offence the following conduct:

"(a) Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence set forth in paragraphs 1 and 2 of this article;

"(b) Attempting to commit an offence set forth in paragraphs 1 and 2 of this article;

"(c) Participating as an accomplice in an offence set forth in this article; or

"(d) In any other way contributing to the commission of an offence set forth in this article."

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* Amendment previously issued in document A/AC.254/5/Add.15.

** Amendments previously issued in document A/AC.254/L.58.

## Libyan Arab Jamahiriya*

[Original: Arabic]

1. It is proposed to adopt either of the following two options for paragraph 2 of article 4:

Option 1

Paragraph 2 of article 4 would be moved to article 2 (Definitions), and paragraph 1 (a) of article 2 would then be revised to read:

"(a) 'Smuggling of migrants' shall mean the intentional procurement for profit of the illegal transportation or entry of a person into or the illegal residence of a person in a State of which the person is not a national or a habitual resident. That procurement shall cover the following:

"(i) Preparing the necessary documents for entry into or residence in another State;

"(ii) Dealing with the documents mentioned in subparagraph (a) (i) of this paragraph;

"(iii) Planning the transfer, transportation or entry into or residence in another State of any of the persons referred to in this paragraph;

"(iv) Supervising or financing the transportation of persons or providing them with the means of transportation into another State;

"(v) Facilitating the illegal entry of persons into another State;

"(vi) Facilitating the illegal residence in another State of any of the persons referred to in this paragraph;

"(vii) Committing corruption for the purpose of facilitating the actions referred to in subparagraphs (a) (i) to (vi) of this paragraph."

Option 2

A new subparagraph would be added after paragraph 1 (a) of article 2 to read:

"(...) Any of the following kinds of conduct shall be considered as constituting smuggling of migrants:

"(i) Preparing the necessary documents for entry into or residence in another State;

"(ii) Dealing with the documents mentioned in subparagraph (a) (i) of this paragraph;

"(iii) Planning the transfer, transportation or entry into or residence in another State of any of the persons referred to in this paragraph;

"(iv) Supervising or financing the transportation of persons or providing them with the means of transportation into another State;

"(v) Facilitating the illegal entry of persons into another State;

* Amendments previously issued in documents A/AC.254/L.62 and A/AC.254/L.101.

"(vi) Facilitating the illegal residence in another State of any of the persons referred to in this paragraph;

"(vii) Committing corruption for the purpose of facilitating the actions referred to in subparagraphs (a) (i) to (vi) of this paragraph."

2. The reason for this change is to qualify the types of conduct set forth in paragraph 2 (a) of article 4 as smuggling of migrants, in order to achieve consistency with the purposes of the Protocol, referred to in article 3, and with the scope of the Protocol, provided for in article 5. Such a change would satisfactorily establish this conduct as a crime (smuggling of migrants) under article 4, paragraph 1, of the Protocol. Accordingly, the first part of paragraph 2 should be deleted; paragraph 3 should become paragraph 2 and be reformulated to clarify its intended purpose, that is, criminalization of the attempt to commit an offence and of criminal participation in both its forms, principal and ancillary (instigation, assistance and condonation); and a new paragraph 3 should be added to provide that the provisions of the Protocol or the provisions of criminalization contained therein do not apply to the persons smuggled. This should not eliminate the possibility of punishing them in accordance with the domestic legislation of each State, as is the case at present in all States.

3. Pursuant to the above, paragraph 3 of article 4 should be revised to read:

"(...) Each State Party shall also adopt the necessary legislation to establish as a criminal offence the following conduct:

"(a) Attempting to commit any of the offences established in paragraph 1 of this article;

"(b) Participating as a principal or as an accomplice, by means of instigation, assistance or condonation, in any of the offences referred to in paragraph 1 of this article.

"(...) The provisions of this article shall be without prejudice to the provisions of paragraph 7 of this article."

**General remarks**

4. The term "migrants" used in the title of the revised draft Protocol is not accurate and should be replaced with a more appropriate term such as "smuggling of persons" or "forcibly migrated persons", because a migrant is a person who willingly and freely migrates, whereas a forcibly migrated person is one whose transfer to another country takes place against his will or by criminal design resulting from compulsion or deception, similar to the offence of abduction under domestic law.

5. Since this draft Protocol is closely related to the draft Protocol relating to trafficking in persons, the Libyan Arab Jamahiriya suggests that the two draft Protocols should be merged into a single instrument.

6. As in many cases the person organizing the migration is also involved in trafficking in persons, and as long as the aim of such a process, according to the relevant definition, is one of profit-making, then that activity is a type of trafficking and can hardly be differentiated from it. Another reason for the need to merge the two draft Protocols into a single instrument is that there are cases in which the "smuggler" is the person involved in the trafficking in persons, in which case it would be difficult to identify the applicable instrument, so the merging of the two draft Protocols would help solve certain

controversial issues, which would subsequently lead to economy of time and effort, in particular in connection with the common articles of the two draft Protocols.

7. The draft fails to deal with the protection of migrants in cases where they are the victims of abduction, especially with regard to their exploitation by those benefiting from smuggling in the receiving State and their mistreatment, which will be out of the control of the authorities of that State, because the smuggler exploits the illegal status of the victim by keeping him/her under the threat of reporting his/her status to the authorities.

8. The draft Protocol makes no mention of preventive measures, which are an important tool in combating and curbing smuggling of persons, especially the prevention of the causes behind migration, whether economic, political or personal. If those causes are not dealt with, then smuggling will continue, no matter how strong the remedial measures.

**Remarks on the articles under consideration***

**Article 7: Measures against the smuggling of migrants by sea**

*Paragraph 3*

9. Subparagraph (c) mentions "persons and cargo on board" vessels, although the draft Protocol has nothing to do with goods and deals specifically with smuggling of persons.

*Paragraph 6*

10. In the second sentence, provision is made for the exception of necessary actions "to relieve imminent danger". The phrase used lacks clarity and should be replaced with the words "except those which might be taken in implementation of existing binding agreements".

*Paragraph 7*

11. The words "or, where necessary, authorities," are not useful and should be deleted.

*Paragraph 8*

12. In the first sentence, replace the word "concluded" with the word "classified", because "concluded" is ambiguous and not defined.

*Paragraph 9*

13. The right of inspection by a State Party should be restricted by an obligation to notify the State Party of which the vessel claims registry, if it is found that the vessel in effect belongs to a State Party, before continuing the inspection or taking any necessary measures.

* Based on the text of the revised draft Protocol contained in document A/AC.254/Add.1/Rev.2.

**Article 8: Compliance measures and arrangements**

*Paragraph 2*

14. The Libyan Arab Jamahiriya suggests the deletion of subparagraph (b), because enhancing the provisions of the Protocol will be a sine qua non once the Protocol comes into force, so there will be no need for such a provision.

**Article 9: Additional legislative and administrative measures**

15. In the first sentence, the word "administrative" should be used instead of the word "legislative", in line with the wording of paragraph 1 of article 8.

16. In the second sentence, the reason for using the word "forfeiture" should be clarified, because it is ambiguous here.

**Article 10: Information**

*Paragraphs 1 and 2*

17. Paragraphs 1 and 2 should be merged, because their meaning is identical. The revised paragraph should read as follows:

> "Pursuant to article 22 of the Convention, States Parties shall cooperate in the field of public information with a view to preventing potential migrants from becoming victims of criminal organizations by increasing public awareness of the fact that smuggling of migrants is a criminal activity frequently perpetrated by criminal organizations for profit and that it poses serious risks to those involved."

18. In subparagraph (e), the word "also" should be added after the words "practices and".

**Article 14: Training**

*Paragraph 2*

19. Subparagraph (a) should be deleted because it duplicates article 12.

*Paragraph 3*

20. The words "potential tools" should be used instead of the word "resources", because the articles listed in the text are not resources but potential tools.

**Article 15: Return of smuggled migrants**

*Paragraph 1*

21. Add at the end of the paragraph the words "whenever such return poses no risk to his or her life and protects him or her from any illegal harm that might be incurred upon return".

**Article 16: Implementation**

22. Paragraphs 1 and 2 should be merged to read:

> "For the purpose of examining the progress made by the States Parties in achieving the implementation of the obligations undertaken in the present Protocol, the States Parties will provide periodic reports to the Conference of the Parties to the Convention. States shall provide such reports together with the reports submitted in accordance with article 23 of the Convention and on the same dates."

## Lithuania*

[Original: English]

**Article 4: Criminalization**

*Paragraph 7*

1. Lithuania considers that paragraph 7 of article 4 is formulated in a slightly inaccurate way and would like to point out that the provisions of the Protocol, as an international agreement, cannot be treated as the basis of penal responsibility of a person.

**Article 9: Additional legislative and administrative measures**

2. Lithuania would like to point out that, on the basis of the *non bis in idem* principle, the sanctions provided for in article 9 may be applied to commercial carriers only in cases where no actions are brought against them for smuggling migrants. Lithuania ventures to express the view that the current wording of the article may leave it open to interpretation as stipulating that, on the basis of the same *non bis in idem* principle, commercial carriers guilty of smuggling migrants should bear administrative responsibility only and not be charged for smuggling migrants.

**Article 10: Information**

*Paragraph 2*

3. Paragraph 2 of article 10 of the draft Protocol would obligate States Parties to undertake preventive measures ensuring that potential migrants do not become victims of crimes committed by organized criminal groups. Lithuania would like to draw attention to the fact that the draft Convention could set obligations to take preventive measures ensuring the rights not only of potential migrants, but also those of migrants in the process of being transported and migrants who have already been transported.

4. In the opinion of Lithuania, the use of the term "victim" raises some doubts. The term "victim" suggests illegal violence used against a person. Lithuania therefore considers that in a case where a migrant may be considered the victim of a crime, the crime itself shall be recognized as trafficking in persons and not as smuggling migrants.

* Amendments previously issued in documents A/AC.254/L.55 and A/AC.254/5/Add.15.

## Morocco*

[Original: French]

Morocco proposes the following text as either paragraph 8 of article 4 (Criminalization) or a new article 4 *bis*:

> "(...) States Parties that have not yet done so shall adopt the necessary legislation or other measures to guarantee respect for and protection of the rights of migrants in irregular situations, as accorded under applicable international law, in particular the right to life, the principles of non-discrimination and *non-refoulement* and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment."

## Netherlands

[Original: English]

### Article 11

The Netherlands proposes to add a new paragraph at the end of the article:

> "(...) With a view to promoting and accelerating cooperation between the relevant authorities, States Parties may conclude bilateral or regional agreements providing for the secondment of liaison officers from one State Party to relevant authorities of the other State Party. The liaison officer shall have the task of giving advice and assistance and of facilitating the secure and rapid exchange of information. He shall have no operational powers and shall respect the integrity of the host country."

## Philippines

[Original: English]

### Article 12: Control of documents

1. The Philippines proposes to add a new paragraph at the end of the article:

> "(...) States Parties shall adopt such measures as may be necessary to ensure the security of all materials used in the production of travel documents and shall, from time to time, initiate innovations in these materials to upgrade the security of travel documents."

2. This is necessary to prevent organized criminal syndicates from manufacturing fake travel documents using materials similar to those used in the manufacture of genuine travel documents.

* Amendment previously issued in document A/AC.254/L.60.

## Singapore

[Original: English]

**Article 7 bis**

*Paragraph 1*

1. Singapore proposes to insert the words "in international waters" after the words "exercising freedom of navigation" in order to clarify the provision so as to ensure that the exclusive right of coastal States to exercise enforcement jurisdiction in territorial waters remains unaffected.

*Paragraph 6*

2. The words ", while in international waters," should also be inserted after the words "to suspect that a vessel" in paragraph 6, for the same reason as above, that is, to remove any ambiguity over the exclusive right of coastal States to exercise enforcement jurisdiction within territorial waters.

## Syrian Arab Republic*

[Original: Arabic]

**Preamble**

1. Remove the square brackets in subparagraphs (a), (c), (d), (f)-(h), (o) and (q).

2. After subparagraph (q), add a new subparagraph similar to the final subparagraph of the preamble of the draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the "Trafficking Protocol"), to read as follows:

> "(...) *Taking into account* the provisions of the United Nations Convention against Transnational Organized Crime."

**Article 4: Criminalization**

*Paragraphs 1-3*

3. Remove the square brackets.

*Paragraphs 1-3, 5 and 6*

4. Add, where appropriate, the words "in accordance with their basic legal principles".

*Paragraph 7*

5. Add the words "for the crime of smuggling of migrants" after the word "punishable".

* Amendments previously issued in documents A/AC.254/L.46 and A/AC.254/5/Add.15.

**Article 6: Jurisdiction**

*Paragraph 1*

6. Add the words "in accordance with their basic legal principles" after the words "shall take".

*Paragraph 2*

7. This paragraph should be consistent with article 9 of the Convention.

**Article 7: Measures against the smuggling of migrants by sea**

*Paragraph 5*

8. Delete the phrase "and to a request for authorization made pursuant to paragraph 3 of this article" because the phrase would obligate the State Party to respond to the requested authorization, while paragraph 3 of this article allows the flag State to authorize the requesting State to board and inspect the vessel and to take appropriate action.

*Paragraph 14*

9. The meaning of the words "operational arrangements in relation to specific cases" needs to be clarified.

*Additional paragraph*

10. The Syrian Arab Republic endorses the proposal made by China to add a new paragraph after paragraph 10 (see above under **China**).

**Article 8: Compliance measures and arrangements**

*Paragraph 1*

11. Add the words "in accordance with their basic legal principles" after the word "adopt".

*Paragraph 2*

12. Delete the word "illegal" in subparagraph (a), because trafficking is per se an illegal act.

**Article 9: Additional legislative and administrative measures**

13. Add the words "in accordance with their basic legal principles" after the words "shall take".

14. The word "forfeiture" needs to be clarified.

**Article 11: Prevention**

15. The Syrian Arab Republic endorses the two paragraphs proposed by the Holy See for addition to this article (see above under **Holy See**).

**Article 11 bis**

16. The Syrian Arab Republic endorses new article 11 *bis*, proposed by China (see above under **China**).

**Additional articles**

17. Articles relating to the following issues should be added:

(a) Assistance for and protection of victims of trafficking in persons, in line with article 4 of the Trafficking Protocol;

(b) Status of the victim in the receiving State, in line with article 5 of the Trafficking Protocol;

(c) Seizure and confiscation of gains, in line with article 5 *bis* of the Trafficking Protocol.

## United States of America

[Original: English]

**Article 9**

The United States of America proposes the following amended text for article 9:

*"Article 9*
*"Other measures*

"1. States Parties shall take legislative or other measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established under article 4 of this Protocol.

"2. Such measures shall include, where appropriate, the establishment, without prejudice to applicable international conventions, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all passengers travelling by land, sea or air in order to ascertain that they each have a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

"3. States Parties shall take the necessary measures, in conformity with their domestic law, to provide for penalties in cases of violation of the obligation set out in paragraph 2 of this article. Such sanctions may include fines and forfeiture of the vehicles or means of transport used."